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Subject: OCSPP News for January 6

OCSPP News Round-Up

General EPA

- Chemical Watch 01/06; EPA publishes final rule on science transparency
- E&E News 01/06; Wheeler says 'secret science' rule not vulnerable to Dems. Is it?

Toxics

- E&E News 01/06; Science rule impact on PFAS, toxics regulation spurs concern
- Bloomberg Law 01/05; 3M, Business Groups Can't Halt New Jersey PFAS Limits (Correct)
- Chemical Watch 01/06; Massachusetts bans 11 flame retardants in variety of consumer products
- Inside EPA 01/06; New Jersey DEP Chief McCabe Faults EPA For Lack Of PFAS Class Policy
- Inside TSCA 01/05; EPA Gives Firms New 60-Day Window To 'Correct' Chemical CBI Claims
- Inside TSCA 01/05; Wheeler Sees Controversial Science Rule Easing Concerns Over TSCA Evaluations
- Inside TSCA 01/05; Environmentalists warn of PFAS in nonstick pans
- Inside TSCA 01/05; EPA begins to weigh risk management options for Perc, NMP

Blogs/OpEd/Other

- JD Supra 01/05; EPA Issues Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials That Are Not Consumer Products
- National Law Review 01/06; EPA Announces Plan to Re-Open TSCA Active-Inactive Inventory Reporting Period to Allow Companies to Correct CBI Claims for Chemical Identity and Submit CBI Substantiations
- National Law Review 01/05; EPA Provides Companies Opportunity to Submit, Amend, or Withdraw Filings under TSCA Active-Inactive Rule
- Asbestos.com 01/06; EPA Evaluation Finds Asbestos Still An Unreasonable Risk
- Bergeson & Campbell Blogs 01/06; EPA Issues Final TSCA Section 6(h) Rules for Five PBT Chemicals
- Beyond Pesticides 01/06; Long-Term Roundup Exposure Found to Harm Keystone Wildlife Species
- Insider NJ 01/06; Sierra Club: Bill to Restrict Harmful Neonicotinoid Pesticides Up in Committee Tomorrow
- Mesothelioma.com 01/05; California Judge Rules the EPA Must Improve Asbestos Data Collection

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EPA publishes final rule on science transparency
Andrew Turley, Chemical Watch
https://chemicalwatch.com/198653/epa-publishes-final-rule-on-science-transparency

The US EPA has released its controversial final rule on science transparency, which restricts the data the agency can use when taking regulatory action to protect human health and the environment.

Backers of the rule for "strengthening transparency in pivotal science underlying significant regulatory actions and influential scientific information" say it will improve the quality of EPA decisions through increased public scrutiny. However, critics say it may put some studies out of reach of the agency, discourage scientists from conducting certain types of research, and allow the agency to cherry pick data with the aim of reaching predetermined conclusions.

"We don't seek to limit anyone's ability to conduct sound science," EPA administrator Andrew Wheeler said in an opinion article about the rule published in the Wall Street Journal on 4 January. "By shining light on the science we use in decisions, we are helping to restore trust in government," he said. "We want the EPA to be able to say, 'you can check our work.'"

The rule specifically targets dose-response data, which is normally critical for chemical risk assessment because it describes the relationship between exposure and adverse effects.

Under the rule – officially published in the Federal Register on 6 January – the EPA must approach studies differently based on the degree of transparency of the underlying data. The agency must give "greater consideration" to a study when the dose-response data is "available in a manner sufficient for independent validation", according to the rule.

This requirement applies when the EPA is "promulgating significant regulatory actions or developing influential scientific information for which the conclusions are driven by the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and an effect".

The rule also:
•requires the EPA to identify, and make publicly available, any science underpinning "significant regulatory action" at the proposed or draft stage, to the extent practicable;
•"reinforces the applicability" of peer review requirements for "pivotal science"; and
•provides criteria for the agency administrator to exempt certain studies from the requirements in the rule.

'No merits'

The rule has drawn criticism from a broad range of commentators since it was proposed in 2018 and supplemented in March. Environmental and public health advocacy groups warned the rule could force the agency to discard legitimate scientific studies, and even violate TSCA's requirement that the EPA rely on the "best available science". The EPA's Science Advisory Board (SAB) also raised concerns about the feasibility of implementing some of the rule's requirements.

In a statement published on 5 January, Andrew Rosenberg at the Union of Concerned Scientists (UCS) described the rule as "indefensible", saying it will "enable powerful industries to derail efforts to curb the pollution they create".

"Scientists and public health experts across the country have repeatedly spoken out against this proposal and the agency has received nearly a million public comments, largely in opposition to the rule," he said. "It has no merits from the standpoint of science or transparency, and it will make it vastly harder for the agency to do its job of protecting public health and the environment."

California attorney general, Xavier Becerra, also criticised the rule, saying that, "under the guise of 'transparency'," the Trump administration was making it easier for the federal government to "ignore legitimate health studies in favour of industry funded reports".

The EPA proposed the "strengthening transparency and validity in regulatory science" rule in 2018. Last year it published a supplemental notice of proposed rulemaking (SNPRM) that introduced various "clarifications, modifications and additions".
[...]

Wheeler says 'secret science' rule not vulnerable to Dems. Is it?
Kelsey Brugger, E&E News
https://www.eenews.net/eedaily/2021/01/06/stories/1063721871

EPA Administrator Andrew Wheeler surprised observers yesterday by announcing that his controversial plan to limit scientific research underpinning agency regulations was essentially bulletproof.

At a virtual event hosted by the conservative Competitive Enterprise Institute, Wheeler said flatly: "The Congressional Review Act is not applicable."

Wheeler argued that the rule, called "Strengthening Transparency in Regulatory Science," could not be overturned by Congress and the White House through the Congressional Review Act because it was essentially a procedural matter.

Critics say Wheeler can't have his cake and eat it, too.

"In short, it's not up to Wheeler," said Cary Coglianese, a University of Pennsylvania professor whose name has been floated as a possible regulatory czar for President-elect Joe Biden.

The final rule compels the agency to give greater weight to scientific research that is based on public underlying data. A considerable amount of research relies on medical records and other confidential information, which cannot be disclosed. Critics fear that the end result of EPA's action will be weaker public health and environmental protections (Greenwire, Jan. 5).

"As I said earlier this year, it's hard to imagine a time when our nation needed to embrace science more than we do at this very moment," Sen. Tom Carper (D-Del.), ranking member of the Senate Environment and Public Works Committee, said in a statement. "Almost a year into our battle against the coronavirus pandemic, that's even truer today."

Rep. Eddie Bernice Johnson (D-Texas), chairwoman of the House Science, Space and Technology Committee, echoed Carper's remarks, calling the rule one of the Trump administration's most "pernicious efforts to roll back environmental protections."

Congressional Republicans, however, praised the action, lauding it as a boon for transparency and scientific integrity at EPA — an agency that attracts conservative suspicion.

Legally, Wheeler has said the rule relies on a "housekeeping statute," which has historically been intended for internal agency business that does not affect people outside the government.

However, Wheeler yesterday said the rule extends beyond the agency and allows people to sue EPA over regulations they might not like.

"I'm not sure how they can argue it won't substantially affect non-agency parties, given the arguments they have made in favor of the rule," noted Stuart Shapiro, an associate dean at Rutgers University.

For years, the rulemaking — first launched under former EPA Administrator Scott Pruitt — has generated Democratic opposition. And the final version is widely seen as a top target for the Congressional Review Act.

Democratic aides on the Environment and Public Works Committee yesterday expressed confidence that — one way or another — the incoming Biden administration would overturn the rule. The CRA would just be the faster way.

The Biden EPA could go through the onerous process to rewrite the regulation, which takes years, or decline to defend it against expected court challenges.

Sources note that the rule has generated criticism from scores of nationwide public health advocates — not just environmentalists who have opposed nearly all EPA rules in the Trump era. So using the CRA to repeal it might be feasible, even in a narrowly divided Senate.

The CRA allows Congress and the White House to kill regulations finalized within the last 60 congressional days. But rule critics must consider that their use of the CRA could backfire.

The CRA would prohibit the agency in the future from promulgating a rule that is "substantially the same." For example, if Democrats used the CRA to repeal the Trump EPA methane rule rollback, it's an open question if the agency would then become barred from regulating methane emissions altogether.

In general, Democrats are outright opposed to any form of the transparency rule and don't see the "substantially the same" provision as a problem.

[...]

Science rule impact on PFAS, toxics regulation spurs concern
E.A. Crunden, E&E News
https://www.eenews.net/greenwire/2021/01/06/stories/1063721919

A controversial new rule limiting EPA's use of scientific data could have sprawling implications for chemical regulations, including efforts to crack down on "forever chemicals."

Multiple experts, advocates and industry members say the Strengthening Transparency in Regulatory Science rule, finalized yesterday, will affect the agency's regulatory approach to toxins. Dubbed the "secret science" rule, the new action gives more weight to studies with data publicly available regarding a toxin's or pollutant's impact on public health, or "dose-response" studies.

Members of the chemical industry maintain the rule will improve the quality of the science EPA relies on. Critics worry it will hinder the agency's ability to keep the public safe and take action on chemicals of concern, including per- and polyfluoroalkyl substances (PFAS).

"The way this rule would function, it would down-weight a lot of human health studies," said Genna Reed, lead science and policy analyst for the Union of Concerned Scientists, noting the rule requires EPA to give nonpublic scientific studies "lesser consideration."

One of the most contested proposals of the Trump administration's tenure, the rule has been touted by EPA as a transparency measure. An initial draft spurred an onslaught of public comments.

In announcing the final rule, EPA Administrator Andrew Wheeler said the agency had "listened to the concerns" people raised and pushed back on criticisms.

"There is no study that will automatically be cut out from review going forward," Wheeler said (Greenwire, Jan. 5).

Opponents maintain the reality is more complex and say the rule will impose harsh parameters around the work of researchers and scientists. "We are not happy with this new rule," said Liz Hitchcock, director of Safer Chemicals, Healthy Families, calling it "costly and unnecessary."

Any immediate impacts on chemical regulations remain to be seen, but experts speculated the rule could have implications for several issues, including PFAS. Those common nonstick chemicals have been found all over the world, and significant data on their impacts, including cancer risks, comes from health studies covered by privacy regulations.

President-elect Joe Biden has pledged to prioritize regulating PFAS through mechanisms like setting a maximum contaminant level (MCL). Several experts said the new rule could hinder such efforts.

"A number of the studies that have been done on PFAS are from different countries," said Betsy Southerland, a former longtime EPA official. "None of them are going to feel the need to make all of their raw data publicly available."

Reed of the Union of Concerned Scientists similarly expressed concern about the rule's implications for PFAS and said it could hinder EPA's ability to set an MCL. She pointed to data collected in and around Parkersburg, W.Va., where residents were exposed for years to PFOA — one of the most studied PFAS — from DuPont's Washington Works plant. Those findings have played a major role in understanding the impacts of PFOA on human health.

"[That study] definitely would be one of the types of studies that would come into question," Reed said.

Mixed reactions and long-term fallout

The rule holds notable implications beyond PFAS. The office of Sen. Tom Carper (D-Del.) has highlighted that studies used in making assessments around COVID-19 surface disinfectants could be impeded.

And while Wheeler emphasized the new rule would not be retroactive, several critics worried about implications for chemicals like lead. Much of the research and data around lead and human health comes from older studies that cannot be replicated in a modern environment. While the EPA administrator can grant exemptions under the rule if a study "is really fundamental to a regulation," opponents remain worried.

"It puts more burdens on researchers," said Reed. "It could really hinder types of work that could be done."

Industry heavyweights struck a very different tone. [...]

3M, Business Groups Can't Halt New Jersey PFAS Limits (Correct)
Sylvia Carignan, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/3m-business-groups-lose-challenge-to-new-jerseys-pfas-limits

3M Co. and a coalition of New Jersey businesses and utilities lost their bid to stop the state from implementing restrictions on PFAS chemicals in drinking water, after a state appeals court rejected their request to stay the rules pending full legal review.

The appellate division of the Superior Court of New Jersey denied the group's motion to stay the regulation Monday. The rule sets enforceable limits on two chemicals in the wide family of per- and polyfluoroalkyl substances, known as PFOA and PFOS.

The regulation will inflict "irreparable harm" on thousands of New Jersey businesses and their customers, including substantial costs for water testing, construction of new water treatment plants, and potentially requiring different water supplies, the companies and public utilities said.

"While the coalition members support appropriate PFAS management, New Jersey established these arbitrarily low thresholds without meaningful public engagement or rational scientific basis," 3M said in a statement.

The court issued a one-page order denying the stay without further details.

The New Jersey Department of Environmental Protection adopted the final PFAS rule in June. The rule declares PFOA and PFOS hazardous substances under state law, and sets enforceable limits of 14 parts per trillion for PFOA and 13 parts per trillion for PFOS in drinking water.

The state attorney general's office declined to comment on the pending litigation Tuesday.

PFAS have been used to manufacture nonstick and stain-resistant coatings in clothing, fast-food wrappers, carpets, and other consumer and industrial products.

The chemicals may cause adverse health effects, including developmental harm to fetuses, testicular and kidney cancer, liver tissue damage, immune system or thyroid effects, and changes in cholesterol, according to the Environmental Protection Agency.

The coalition included 3M, the Landis Sewerage Authority, Sussex County Municipal Utilities Authority, Commerce and Industry Association of New Jersey, New Jersey Business and Industry Association, and the Chemistry Council of New Jersey.

Anthony Russo, president of the Commerce and Industry Association of New Jersey, and Sean Lynch, a spokesman for 3M, said they would continue to pursue the litigation.

Judge Joseph L. Yannotti wrote the order.

Bressler, Amery & Ross PC and Beveridge & Diamond PC represented 3M. Cullen & Dykman LLP represented the utilities and associations.

The case is In re: Appeal of the New Jersey Dep't of Envtl. Protection's June 1, 2020 Adopted Amendments, N.J. Super. Ct. App. Div., No. A-000307-20 and A-000308-20, 1/4/21.

(Corrects procedural posture of the case in headline and first paragraph.)

Massachusetts bans 11 flame retardants in variety of consumer products
Terry Hyland, Chemical Watch
https://chemicalwatch.com/198651/massachusetts-bans-11-flame-retardants-in-variety-of-consumer-products

Massachusetts Governor, Charlie Baker, has signed legislation (H 4900) that will ban the use of 11 flame retardants in a wide variety of consumer products from the end of this year.

From 31 December 2021, the new law will ban the sale or manufacture of children's products, upholstered furniture, carpeting, bedding and window treatments with more than 1,000ppm of any the following substances in any component part:
•ttris(1,3-dichloro-2-propyl)phosphate (TDCPP);
•ttris(2-chloroethyl)phosphate (TCEP);
•tantimony trioxide;
•thexabromocyclododecane (HBCD);
•tbis(2-ethylhexyl)-3,4,5,6-tetrabromophthalate (TBPH);
•t2-ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB);

•tchlorinated paraffins;
•ttris(1-chloro-2-propyl)phosphate (TCPP);
•tpentaBDE;
•toctaBDE; and
•ttetrabromobisphenol A (TBBPA).

In addition to the year-end ban, manufacturers have until 1 July to notify retailers or others selling the products of the law's passage.

Violators can face a fine of up to $5,000 for a first offence, $25,000 for a second offence and up to $50,000 for a third, or subsequent, violations. Those fines can be tripled for manufacturers or retailers who "knowingly" violate the law.

Exposure to flame retardants has been linked with a number of potential health effects, including cancer, thyroid disease, decreased fertility and lower IQ, according to the Silent Spring Institute.

Possible labelling programme

The law directs the state's Department of Environmental Protection to evaluate every three years whether additional chemicals should be banned. It also gives the department authority to create a labelling programme for products that meet relevant fire safety standards without using any of the restricted flame retardants.

"This is a massive step forward in protecting our residents and first responders in Massachusetts from the dangers of these toxic chemicals associated with flame-retardant products", the Professional Firefighters of Massachusetts (PFFM) said on 1 January, the same day the bill was signed.

Mr Baker's signature followed approval of H 4900 by the state House and Senate late in 2020. It also marks a turnaround from late 2018, when the governor declined to sign a similar bill.

H 4900 exempts a number of products from the flame retardant ban, including products in motor vehicles, watercraft, aircraft, all-terrain vehicles and off-highway motorcycles. It also allows the sale or purchase of previously-owned products that contain any of the covered flame retardants.

Massachusetts law follows action taken by other US states in recent years. Maine passed a law in 2017 to prohibit the sale of residential upholstered furniture containing more than 0.1% of a flame retardant chemical, or a mixture that includes them. California has also banned the use of most flame retardants in residential upholstered furniture, children's products and mattress foam.

New Jersey DEP Chief McCabe Faults EPA For Lack Of PFAS Class Policy
Suzanne Yohannan, Inside EPA
https://insideepa.com/daily-news/new-jersey-dep-chief-mccabe-faults-epa-lack-pfas-class-policy

Retiring New Jersey environment chief Catherine McCabe is faulting what she calls a lack of EPA leadership as one of two major obstacles that explain why the state cannot yet regulate per- and polyfluoroalkyl substances (PFAS) as a class, adding that the other hurdle is differences among the chemicals that make a single rule difficult.

McCabe, who is retiring Jan. 15 as commissioner of the New Jersey Department of Environmental Protection (DEP) after three years under Gov. Phil Murphy (D), discussed PFAS, climate change and her state's first-in-the-nation environmental justice law during a recent podcast, "The Enforcement Angle: NJDEP's Catherine McCabe," sponsored by the Environmental Law Institute. Justin Savage, an attorney with Sidley Austin, interviewed her.

Prior to serving as DEP commissioner, McCabe briefly was acting EPA administrator until Scott Pruitt, the Trump administration's first agency chief, was confirmed by the Senate. McCabe worked at EPA since 2005, serving as deputy regional administrator for EPA Region 2, and before that worked at the Department of Justice for 22 years, including holding a top role in its environmental enforcement section.

DEP was the first state regulator to set a drinking water standard, or maximum contaminant level (MCL), for a particular PFAS and has been seen as a leader among states in regulating the chemicals in the class.

The state sought to "devise a way of regulating" PFAS as a class, McCabe said. But the agency faced "two major obstacles to that effort"; these were the differences among the chemicals' makeup themselves and EPA's lack of leadership on the class of chemicals, she said. PFAS are a class of thousands of chemicals that have been widely used for years in consumer, commercial and industrial products for their non-stick and other qualities. But they are driving significant health concerns due to widespread contamination and studies linking them to a range of disease outcomes.

New Jersey has set drinking water limits for perfluorononanoic acid (PFNA), perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) -- three out of thousands of PFAS -- but McCabe called the work to address such chemicals both on a regulatory and enforcement basis "quite a heavy lift," requiring extensive scientific research and detailed rule-writing, as well as legal defense of the standards. Excellent scientific expertise in-house and within the state's Drinking Water Quality Institute and Department of Health "enabled us to be the first state in the nation to start adopting those MCL standards," she said.

But she lamented industry's continual development of replacement PFAS "as quickly as we catch on with the problems of the existing chemicals." She cited as an example GenX as a replacement to the now phased-out PFOA.

She said it would "be best, frankly, if all of these chemicals could be regulated as a class and if EPA would set the standards on a national basis," creating "science-based standards, of course," she added.

But, she said, scientists say that the different kinds of PFAS are so different one standard will never cover all of them. "You really have to analyze them individually, which is a huge amount of work."

The second obstacle has been EPA's lack of leading the effort on PFAS, with the agency taking a "back seat" on PFAS in recent years, she said. She added that most states are not set up to handle the scientific and technical challenges of setting PFAS standards. "That's really what EPA should be doing," she said.

She signaled that New Jersey cannot advance regulation of PFAS as a class alone, and she expressed hope that the incoming Biden administration will make "more of an effort" than the Trump administration "because this is a contamination problem that is a serious threat to our drinking water supplies all around the country."

The Trump administration has been criticized for its lack of regulatory efforts on PFAS, with states largely taking the [...]

EPA Gives Firms New 60-Day Window To 'Correct' Chemical CBI Claims
David LaRoss, Inside TSCA
https://insideepa.com/tsca-news/epa-gives-firms-new-60-day-window-correct-chemical-cbi-claims

EPA is giving companies an additional 60 days to justify claims that their use of substances on the TSCA inventory of chemicals in commerce is confidential business information (CBI) that should be shielded from public disclosure, citing firms' "confusion" on the confidentiality test following court-ordered changes to the inventory rule.

EPA is slated to publish a Federal Register notice Jan. 6 formally opening the door to new "corrections" to firms' claims of confidentiality or their evidence for those claims, starting Feb. 5 and continuing through April 6.

"EPA is reopening the reporting period because the Agency has become aware of submitter confusion and issues regarding confidential business information (CBI) claims during the initial reporting period. These issues may have inadvertently undermined existing, potentially valid, CBI claims for chemical identity," the notice reads.

Under the 2016 reforms to TSCA, EPA was required to conduct a one-time update of its chemical inventory, with the identities of chemical users made public unless that information is CBI.

The agency issued a 2017 rule, known as the Inventory Active-Inactive Rule, to set requirements for CBI claims for that update, but a 2019 decision from the U.S. Court of Appeals for the District of Columbia Circuit required it to update how the rule deals with reverse engineering, or methods that can be used to identify chemicals listed in the confidential portion of the inventory.

In response, EPA revised the rule, requiring companies that previously made CBI claims to re-substantiate submissions that "address whether a specific chemical identity is readily discoverable through reverse engineering." Firms that did not substantiate their prior claims would see their data moved from the confidential inventory into the public realm.

But many entities were slow to make those filings before the Nov. 1 deadline, leading to a broad public push urging them to do so, and enough appear to have either been unaware of the requirement or misunderstood it that EPA says a supplemental process is needed.

"Certain entities have indicated to EPA that they either misunderstood the reporting requirements and did not submit the filings pursuant to the requirements of the Active-Inactive Rule or made mistakes in their filings," the new notice reads.

Industry Confusion

EPA cites a series of examples of that confusion, including miscommunications between manufacturers and processors, individual officials who mistakenly believed their firms were exempt from the substantiation mandate, and companies that believed they were exempt because they were only seeking to maintain existing CBI claims rather than establishing new ones.

"In each of the instances described previously, the entities seeking relief are either American companies or have a significant U.S. chemical manufacturing or processing presence. The Agency believes that not providing this limited relief will result in predictable harm to these entities," the notice says.

It notes in particular that when a chemical on the inventory has multiple users, the firms should coordinate their CBI decisions. "If there are multiple reporters of the same chemical substance, and several claim it as confidential, and one does not, the CBI claim for chemical identity will be denied."

According to an October presentation from Greg Clark, a partner at Keller and Heckman, companies subject to the new substantiation mandate must address the following questions for CBI claims:

"Does this particular chemical substance leave the site of manufacture (including import) or processing in any form, e.g., as a product, effluent, or emission? If yes, please explain what measures have been taken, if any, to guard against the discovery of its identity [and] If the chemical substance leaves the site in a form that is available to the public or your competitors, can the chemical identity be readily discovered by analysis of the substance [...]

Wheeler Sees Controversial Science Rule Easing Concerns Over TSCA Evaluations

Maria Hegstad, Inside TSCA

https://insideepa.com/tsca-news/wheeler-sees-controversial-science-rule-easing-concerns-over-tsca-evaluations

EPA Administrator Andrew Wheeler is defending the agency's controversial new rule favoring studies where the underlying dose-response data is available for validation, saying it will help officials address growing concerns from both industry and environmentalists over how it is evaluating chemicals under the TSCA program.

"I think having that information out there, publicly, is going to be very key to the implementation of the TSCA rule. I don't see this hampering TSCA at all," he said in response to a question from Inside TSCA Jan. 5 during an online forum hosted by the free-market Competitive Enterprise Institute (CEI), where he announced the new rule.

As first proposed in 2018, the measure -- a top priority for free-market and other conservative groups like CEI -- would require regulatory decisions to incorporate only studies and models whose underlying information is publicly available.

The final version, slated for promulgation Jan. 6, is narrower than the draft, requiring EPA "to give greater consideration to studies where the underlying dose-response data are available in a manner sufficient for independent validation" when it is promulgating "significant" regulatory actions or developing "influential scientific information."

The rule also requires EPA to identify and make publicly available the science that underlies policy proposals, renews peer review requirements for "pivotal science," and provides criteria for when the Administrator can exempt certain studies from the rule's requirements.

Even so, the rule will affect programs agency-wide because dose-response data lies at the heart of many agency decisions, ranging from Toxic Substances Control Act (TSCA) chemical evaluations and any resulting risk mitigation rules to national air standards to drinking water standards and pesticide registration decisions.

The Trump administration's effort to craft the science transparency regulation has long drawn stiff criticism from environmentalists and other critics, who charge the approach is unlawful, would open the door to disclosing confidential health data and would severely limit the agency's ability to rely on a range of studies needed to justify stringent standards.

They continued their criticisms after the final rule's release, urging the incoming Biden administration to make the rule's rescission a top priority.

CBI Concerns

But even some chemical industry officials had warned that the disclosure requirements in the proposed version of the rule would threaten release of confidential business information (CBI) and could slow some decision-making within EPA's TSCA program, such as approvals of new chemical uses.

For example, the American Chemistry Council (ACC) urged EPA in comments to write guidance to apply regulatory and statutory protections for CBI. "Under TSCA, while the summarized study results, analysis, and final report may be publicly available, the underlying data in a health and safety study may qualify as CBI when the underlying data are not in the public domain and that data provides a commercial value to its owner," the group said.

Trump EPA toxics chief Alex Dunn had raised similar concerns, saying the agency is grappling with how to obtain more data about existing chemicals under evaluation from companies concerned that EPA has limited ability to protect that data as CBI under TSCA, since the toxics law has its own requirements that EPA release studies related to environmental safety and health.

"Under amended TSCA, health and safety information cannot be called CBI. ... EPA very much wants information from companies ... At the same [time], we have a counterbalance in the statute that doesn't allow us to provide much protection for that information."

Dunn said the "net" result "is that we are not receiving as much information as we would like or we are negotiating to find ways to receive the information and provide as much protection as we are allowed to legally, which is not too much."
[...]

Environmentalists warn of PFAS in nonstick pans
TSCA Takes, Inside TSCA
https://insideepa.com/tsca-takes/environmentalists-warn-pfas-nonstick-pans

Environmentalists are warning consumers that non-stick cookware may contain traces of per- and polyfluoroalkyl substances (PFAS) even if it is marketed as being free of perfluorooctanoic acid (PFOA), a kind of PFAS that has largely been phased out, the latest sign of concern about the presence of the chemical in consumer goods.

In a recent report, the Michigan-based Ecology Center found that their testing of 14 nonstick cooking pans found that almost 80 percent of the pans tested were coated with polytetrafluoroethylene (PTFE), a fluoropolymer which is processed using PFAS, including PFOA.

The report also found that 20 percent of the nonstick baking pans tested were also coated with PTFE.

"'PFOA-free' doesn't mean PFAS-free. In fact, most pans labeled 'PFOA-free' were coated with PTFE without clearly indicating that," the Ecology Center says.

The group notes that while chemical manufacturers agreed to stop manufacturing PFOA several years ago, the replacement chemical, known as GenX, "poses similar toxicity concerns and has become widespread in waterways such as North Carolina's Cape Fear River. So a PFOA-free pan does not necessarily represent a better alternative."

The Ecology Center says that PFOA is a process aid long used in the making of PTFE fluoropolymers -- fluorocarbon-based polymers made using various PFAS.

While industry representatives say that fluoropolymers pose few, if any, risks because they are stable and benign a group of academics recently published a paper urging policymakers to curb the production and use of they substances because of concerns that they are not safe, pushing back on industry claims that the substances are stable, not harmful and widely used in critical medical and other goods.

The academics, together with environmentalists, say industry should move toward only using fluoropolymers in highly controlled environments and in limited essential-use categories because they are not as stable or easy to safely dispose of as industry claims, and will degrade in a way that leaches PFAS into the environment.

While conceding that PTFE is "a very stable material," the Ecology Center says it can break down with high heat, adding that PTFE-coated pans have been found to release hazardous chemicals when heated to a certain temperature, particularly above 400-500 degrees Fahrenheit.

"These temperatures are readily achievable when the burner is set in the high range," the report states. "Potential health hazards to humans from these emissions are not entirely understood."

"Some scientists, including those from the chemical industry, have argued PTFE cannot enter cells or otherwise harm the body because it is a stable polymer of high molecular weight," the report says. "Others disagree, noting PTFE formulations can contain nano-sized particles of the polymer, and such nanoparticles have been shown to penetrate many different cell types."

The Ecology Center tells consumers that they can remain vigilant by using PTFE-coated nonstick pans "cautiously and never on high heat," considering cast iron or other durable alternatives, and remaining aware that "PFOA-free" in marketing does not mean PFAS-free.

They also urge consumers to lobby McDonald's to remove PFAS from its food packaging, and remain aware of PFAS in other products, such as waterproofing sprays for furniture and clothes, and ski and automotive waxes.

In addition to their PFAS concerns, the Ecology Center also noted that two baking pans and one cooking pan they tested were coated with a bisphenol A (BPA)-based epoxy "without any indication of coating type on the packaging."

"BPA-based epoxy is the same material notorious for leaching the hormone disruptor bisphenol A (BPA) into some canned foods. When BPA-based epoxy is used to line the inside of a food can, BPA can migrate into the food, especially during sterilization when the filled can is heated," the report states.

However, there is limited published research into BPA-based [...]

EPA begins to weigh risk management options for Perc, NMP
TSCA Takes, Inside TSCA
https://insideepa.com/tsca-takes/epa-begins-weigh-risk-management-options-perc-nmp

EPA is gearing up to begin addressing the unreasonable risks it identified in its recently finalized TSCA evaluations of the common solvents perchloroethylene (perc, or PCE) and n-Methylpyrrolidone (NMP).

The agency announced earlier this week that it will host a webinar Jan. 14 to begin reviewing options for managing risks of PCE under the Toxic Substances Control Act (TSCA) after its final evaluation, released Dec. 14, concludes 59 of 61 evaluated uses pose unreasonable risks that the agency must regulate.

The agency also announced Jan. 5 that it is seeking nominations from small entity representatives to advise the agency on how to craft the pending TSCA risk management rules to mitigate adverse effects on small entities when it seeks to address the unreasonable risks the agency identified in its final evaluations of perc and NMP.

The final NMP evaluation, released Dec. 23, finds that 34 of 45 uses the agency evaluated pose unreasonable risks to workers or consumers.

The small entity representatives, including owners or operators of small businesses, small organization officials, or small-government officials, will be asked to provide information and recommendations to a pair of Small Business Advocacy Review (SBAR) panels EPA will form, one for each chemical, as required by the Regulatory Flexibility Act.

By statute, the SBAR panels must be created for any rulemaking that may adversely affect small businesses. The panels include representatives of EPA, the Small Business Administration and the White House Office of Management and Budget (OMB).

Each SBAR panel "will focus on the agency's development of proposed rules to address unreasonable risks identified in EPA's recently completed Toxic Substances Control Act (TSCA) risk evaluations for these chemicals," EPA's announcement states.

EPA is asking for nominations to be submitted by Jan. 19.

EPA has hosted similar webinars following the release of its other final TSCA risk evaluations to explain its findings of "unreasonable risk," and to get input on potentially writing rules to manage those risks.

EPA's announcements follow an announcement from the Small Business Administration's Office of Advocacy that it will host one of its virtual environmental roundtables on the perc evaluation and potential effects of resulting risk management regulation on small businesses on Jan. 15.

EPA Issues Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials That Are Not Consumer Products

Steven Hoch and Clark Hill, JD Supra

https://www.jdsupra.com/legalnews/epa-issues-interim-guidance-on-8096883/

On Dec. 18, the Environmental Protection Agency (EPA) released for public comment new interim guidance that outlines the current state of the science on techniques and treatments that may be used to destroy or dispose of perfluorooctanoic acid (PFAS and PFAS-containing materials from non-consumer products, including aqueous film-forming foam for firefighting). The guidance is now open for public comment.

The EPA states that this interim guidance does not take into account the concentration of PFAS in wastes or other materials, and defers to the need to perform a risk-based analysis. Further, it does not discuss storage of PFAS-containing materials. Rather, it focuses on the currently available disposal technology to handle the broad range of PFAS containing products, yet is careful to say that there are significant levels of uncertainty about the capacity to monitor PFAS-containing materials enter the environment.

The disposal technologies that are currently available include thermal treatment (destruction), landfilling (disposal), and underground injection (disposal). The EPA outlines each such technology and links them to various types of PFAS-containing products that may be handled by the use of such technology. One key issue in determining the appropriate disposal criteria is that PFAS-containing material may be found as a solid, liquid, or gas with each having its own distinct issues affecting disposal depending on its intended usage and manufacturing process.

The list of PFAS-containing manufacturing processes is daunting. Those mentioned by EPA are:

Adhesives
Cleaning products
Computers/Electronics
Film/Lithography
Metal Plating
Oil and Gas Drilling
Paint/Coatings
Paper Products
Pesticides/Fertilizer
Plastic Materials/Resins
Textiles/Apparel/Leather/Carpets
Aerospace Components
Automotive Components
Semiconductors
Building and Construction Materials
Mining
Cosmetics and Personal Care Items
Fire Suppression

The EPA has identified three technological solutions that are commercially available and potentially have the capability to destroy PFAS or manage the migration of PFAS in PFAS-containing materials. These technologies are thermal treatment, landfilling, and underground injection control. Each of these technologies has a different treatment methodology, control devices, emissions testing/monitoring, and levels of uncertainties. Given this, the Interim

Guidance provides significant detail of these technologies and their respective pluses and minuses. It also provides estimated costs of the use of each type of technology depending on whether the waste is solid, liquid, or gaseous.

Lastly, the Interim Guidance discusses potentially vulnerable populations living near likely destruction or disposal sites. Each type of PFAS-containing materials form and the type of treatment used creates a different risk to such populations, which calls for further risk assessments.

Also, the EPA admits there is considerable further research to be done on three broad areas: better characterization of PFAS-containing materials to be destroyed or disposed of; measuring and assessing the effectiveness of existing methods for destruction; and, the development of other technologies that may be employed instead of or with existing technologies.

The issue of PFAS and PFAS-containing products is in its infancy. Approaches will change over time as more becomes known about these substances' structure, their vulnerabilities to destruction, and the impact of disposal on the environment.

The Interim Guidance can be found here.

EPA Announces Plan to Re-Open TSCA Active-Inactive Inventory Reporting Period to Allow Companies to Correct CBI Claims for Chemical Identity and Submit CBI Substantiations
Thomas Berger and Javaneh Nekoomaram, National Law Review
https://www.natlawreview.com/article/epa-announces-plan-to-re-open-tsca-active-inactive-inventory-reporting-period-to

On January 5, 2021, the U.S. Environmental Protection Agency (EPA) released the pre-publication version of a final rule announcing the reopening of the reporting period under the Toxic Substances Control Act (TSCA) (15 U.S.C. § 2601 et seq.) "Active-Inactive" rule. This will allow companies to remedy any reporting errors that may have earlier been made under the rule pertaining to confidential business information (CBI) claims for specific chemical identities of substances listed on the TSCA Chemical Substance Inventory (Inventory).

TSCA Inventory Active-Inactive Rule and CBI Claims
The TSCA Active-Inactive Rule was published in 2017 and required U.S. manufacturers and importers to submit reports (Notice of Activity "Form As") identifying chemicals that were manufactured, imported, or processed for non-exempt commercial purposes in the U.S. between June 21, 2006 and June 21, 2016. These reports allowed EPA to divide chemicals on the TSCA Inventory into "active" chemicals and "inactive" chemicals.

The rule also provided manufacturers and importers the opportunity to indicate if they sought to maintain existing CBI claims for chemicals that appeared on the confidential portion of the Inventory. In particular, the Form A allowed companies to identify if they were seeking to maintain an existing claim of confidentiality for the specific chemical identity of a confidential chemical, identified by Accession number. If multiple companies reported for the same chemical, and some companies sought to maintain the existing CBI claim for chemical identity, but even one company did not (by failing to check the appropriate box), EPA's position has been and is that the chemical is publicly known to be in U.S. commerce and, therefore, planned to make the chemical identity public.

Re-Opening of Reporting Period for CBI Corrections
In May 2020, the Agency published an interim list of Accession numbers for confidential chemicals that it planned to make public due to responses received in NOA Form As. Since that time, EPA has been informed by submitters about confusion regarding the requirements of the Active-Inactive reporting rule, misunderstandings about the rule's exemptions from reporting, the lack of supplier or customer coordination on reporting, the lack of coordination between companies reporting for the same confidential chemical, and reporting errors. EPA is also concerned about the potential consequences, including substantial financial and competitive harm, that companies fear they will face if EPA were to disclose the chemical identities of CBI substances.

The rule, therefore, will reopen the reporting period for 60 days to give companies the opportunity to submit, amend, or withdraw NOA Form A "active" notifications solely to make any corrections to confidentiality claims and substantiations. EPA clarifies that entities who reported a chemical that is on the public portion of the TSCA Inventory should not use this re-opened reporting window. Companies may also use the re-opened reporting period to provide the required CBI substantiations.

The reporting period will begin 30 days after the rule is published in the Federal Register. The reporting deadline for submissions, amendments, or withdrawals of NOA Form As, and for submission of accompanying CBI substantiations, will be 60 days after that date (90 days after the date of the rule's publication in the Federal Register).

EPA Provides Companies Opportunity to Submit, Amend, or Withdraw Filings under TSCA Active-Inactive Rule
Lynn Bergeson and Carla Hutton, National Law Review
https://www.natlawreview.com/article/epa-provides-companies-opportunity-to-submit-amend-or-withdraw-filings-under-tsca

The U.S. Environmental Protection Agency (EPA) announced on January 5, 2021, that it is reopening the reporting period under the Toxic Substances Control Act (TSCA) Inventory notification active-inactive rule where companies identified chemicals that were manufactured, imported, or processed in the United States during the ten-year time period ending on June 21, 2016. As reported in our June 26, 2017, memorandum, "EPA Issues Final TSCA Framework Rules," the final TSCA Inventory notification (active-inactive) rule established a retrospective electronic notification of chemical substances on the TSCA Inventory that were manufactured (including imported) for nonexempt commercial purposes during the ten-year time period ending on June 21, 2016, with provision to also allow notification by processors. From August 11, 2017, through October 5, 2018, chemical manufacturers and processors provided information on which chemicals were manufactured, imported, or processed in the United States over the past ten years. The reporting period included an opportunity for submitters to assert claims to retain specific chemical identities as confidential business information (CBI). In May 2020, EPA posted an interim list of chemicals expected to lose their CBI status and move to the public portion of the TSCA Inventory. In its January 5, 2021, announcement, EPA states that it since become aware of "submitter confusion and issues regarding CBI claims" during the initial reporting period. EPA is allowing companies to submit, amend, or withdraw filings under the TSCA Inventory notification (active-inactive) rule to maintain existing CBI claims for specific chemical identity. The reporting period will reopen 30 days after publication in the Federal Register and run for 60 days after that date.

EPA Evaluation Finds Asbestos Still An Unreasonable Risk
Tim Povtak, Asbestos.com
https://www.asbestos.com/news/2021/01/06/epa-asbestos-unreasonable-risk/

The U.S. Environmental Protection Agency released Part 1 of its Final Risk Evaluation for Asbestos, reaffirming preliminary findings from March that were roundly criticized for underestimating the dangers of exposure to this toxic mineral.

Six ongoing use categories of asbestos were evaluated by the EPA, which found 16 conditions of use that presented unreasonable risk to human health through either occupational exposures or consumer uses.

Part 1 of the evaluation, released in late December 2020, involved the chrysotile type of asbestos. Chrysotile is the only type of asbestos being imported, processed or distributed for use in the U.S. today.

The Part 2 preliminary evaluation, which will become public in mid-2021, will include five other types of asbestos, along with legacy asbestos and associated disposals of chrysotile asbestos.

"EPA found unreasonable risks to consumers and bystanders from all consumer uses of chrysotile asbestos," the report stated.

It also found unreasonable risks to workers and those "nearby but not in direct contact with chrysotile asbestos."

Part 2 of Risk Evaluation Will Bring More Scrutiny

The EPA's risk evaluation stemmed from the 2016 amendment of the Toxic Substances Control Act, which identified asbestos as one of the first 10 chemicals to be examined.

After the Part 2 final evaluation, the EPA may propose increased regulations to further limit the processing, manufacturing or use of asbestos or asbestos products. As part of the TSCA, the EPA must address any unreasonable risk that is found.

In this latest report, the EPA found unreasonable risk in these occupational conditions:

Processing and industrial use of asbestos diaphragms in the chloralkali industry
Processing and industrial use of asbestos-containing sheet gaskets in chemical production
Industrial use of asbestos-containing brake blocks in the oil industry
Commercial use of aftermarket automotive asbestos-containing brakes/linings
Commercial use of other asbestos-containing friction products
Commercial use of other asbestos-containing gaskets.
It found unreasonable risk in consumer uses of automotive asbestos-containing brakes and brake linings and in asbestos-containing gaskets.

The EPA found no unreasonable risk in the actual importation of chrysotile asbestos or the distribution of asbestos-containing products. It found no unreasonable risk in the use of asbestos-containing brakes or sheet gaskets in a specialized NASA transport plane.

It also found no risks to the environment from any condition of use and verified that U.S. automotive manufacturers are not installing asbestos brakes on new cars for domestic distribution.

Asbestos Imports Are Limited

Asbestos, which already is heavily regulated, has not been mined in the U.S. since 2002. According to the U.S. Geological Survey Mineral Report, a record low of 100 metric tons of raw asbestos was imported in 2019, a fraction of the record high of 803,000 metric tons imported in 1973.

In recent years, the chloralkali industry has consumed all the raw asbestos being imported, using it for semipermeable diaphragms to make chlorine.

Asbestos is a naturally occurring mineral that was once used ubiquitously in hundreds of products. It was valued for its heat resistance and tensile strength.

It's toxicity, though, can lead to serious health issues, including lung cancer and mesothelioma.

Manufacturing of asbestos products such as insulation, vinyl floor tiles, commercial paper and many other building materials is now prohibited.

The product list of imports today includes brake blocks, sheet gaskets, aftermarket automotive brakes and other gaskets and friction products.

Criticism of EPA Is Widespread

While the EPA knows how much raw asbestos and what asbestos products are being imported, the exact import volumes of asbestos products are not fully known.

That unknown is part of the criticism often levied against the EPA from various critics.

Only days before the final [...]

EPA Issues Final TSCA Section 6(h) Rules for Five PBT Chemicals
Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs
http://www.tscablog.com/entry/epa-issues-final-tsca-section-6h-rules-for-five-pbt-chemicals

On January 6, 2021, the U.S. Environmental Protection Agency (EPA) issued final rules under Section 6(h) of the Toxic Substances Control Act (TSCA) for five persistent, bioaccumulative and toxic (PBT) chemicals -- 2,4,6-tris(tert-butyl)phenol (2,4,6-TTBP) (86 Fed. Reg. 866); decabromodiphenyl ether (decaBDE) (86 Fed. Reg. 880); hexachlorobutadiene (HCBD) (86 Fed. Reg. 922); pentachlorothiophenol (PCTP) (86 Fed. Reg. 911); and phenol, isopropylated phosphate (3:1) (PIP (3:1)) (86 Fed. Reg. 894). TSCA required EPA to take expedited action on specific PBT chemicals to address risk and reduce exposures to the extent practicable. EPA identified these five PBT chemicals for expedited action, following criteria outlined in TSCA. The final rules limit or prohibit the manufacture (including import), processing, and/or distribution in commerce for the following:

DecaBDE: A flame retardant in plastic enclosures for televisions, computers, audio and video equipment, textiles and upholstered articles, wire and cables for communication and electronic equipment, and other applications;

PIP (3:1): A plasticizer, a flame retardant, an anti-wear additive, or an anti-compressibility additive in hydraulic fluid, lubricating oils, lubricants and greases, various industrial coatings, adhesives, sealants, and plastic articles;

2,4,6-TTBP: An intermediate/reactant in processing, and it is incorporated into formulations destined for fuel and fuel-related additives;

HCBD: A chemical used as a halogenated aliphatic hydrocarbon that is produced as a byproduct during the manufacture of chlorinated hydrocarbons; and

PCTP: A chemical used to make rubber more pliable in industrial uses.
The final rules will be effective February 5, 2021. More information on the final rules is available in our December 23, 2020, memorandum, "EPA Releases Final TSCA Section 6(h) Rules for Five PBT Chemicals."

Long-Term Roundup Exposure Found to Harm Keystone Wildlife Species
Blog, Beyond Pesticides
https://beyondpesticides.org/dailynewsblog/2021/01/long-term-roundup-exposure-found-to-harm-keystone-wildlife-species/

Long-term exposure to formulated Roundup and glyphosate results in significant harm to wildlife species that form the bottom of aquatic food chains, according to a study published in Microbiome by researchers at University of Birmingham, UK. The water flea Daphnia spp. often functions as a keystone species in lakes and ponds, and because of its ecological importance is frequently used as an indicator species in toxicity tests performed by pesticide regulators. Lead author Luisa Orsini, PhD, notes that most of this testing is flawed by limitations in its scope.

"The problem is that much of the evidence is rooted in outdated toxicity tests which only look at the number of animals that die on exposure to extremely high concentrations of these chemicals," Dr. Orsini said. "These tests also overlook the pathological effects arising from long-term exposure to low doses. What we're proposing is that toxicity is measured by looking at what happens to the animal at a molecular and fitness level following long-term exposure, which encompasses the entire animal life cycle."

Dr. Orsini and her research team exposed populations of Daphnia magna to the maximum contaminant level (1 mg/L) of both the formulated product Roundup, and technical grade glyphosate established by the US Environmental Protection Agency (EPA), over the course of the animal's life. The team then investigated a range of impacts and adverse changes that occurred as a result, including fitness burden, genotoxicity (damage to DNA), and alterations within the water flea's gut microflora. A control population received no chemical exposure.

Changes in fitness were seen for every trait except mortality. Roundup delayed average age of sexual/reproductive maturity, reduced size at maturity, decreased the total number of offspring produced, and increased developmental failure – as determined by the number of aborted eggs, and juveniles borne dead.

Researchers also observed damage to DNA, with glyphosate and Roundup showing only slight differences in affected pathways. One of Daphnia's benefits as a test species is that its genetic makeup overlaps with a number of other animal species. As such, the paper notes that their genotoxic findings have implications for other animals. "Conserved gene domains, which may be of potential concern as targets for glyphosate in other species, include three main categories: liver metabolism (lipids and glucose), inflammation pathways (leukocytes), and collagen degradation, responsible for the repair of wounds and tissue remodeling," the study reads.

Roundup and glyphosate were also found to indirectly alter both the makeup and total number of microbiota in the water flea's gut. These changes were correlated with alterations to the way fat and carbon are metabolized, as well as the animal's detoxification pathways.

Previous research has identified differences between formulated Roundup and its active ingredient glyphosate, with indications that the formulated product is more toxic. With the present study, although the two materials displayed some slight differences in effects, chronic exposure to both compounds resulted in significant harm.

Dr. Orsini notes the context in which her team's research was conducted. "Research surrounding Roundup has been controversial since it first appeared on the market in the 1970s," the lead author said. "Claims that it causes diseases and disorders ranging from cancer to autism stack up against industry-paid reports arguing that the product has no untoward effects."

There has been a concerted effort by Bayer Monsanto and the agrichemical industry to spin and misrepresent the science on glyphosate and other pesticides to the public. Regulators like the EPA have been accused by advocates of running interference for the industry, as it recently reregistered the chemical for another 15 years, glossing over a range of adverse impacts.

Late last year, Beyond Pesticides joined with a coalition [...]

Sierra Club: Bill to Restrict Harmful Neonicotinoid Pesticides Up in Committee Tomorrow
Press Release, Insider NJ
https://www.insidernj.com/press-release/sierra-club-bill-restrict-harmful-neonicotinoid-pesticides-committee-tomorrow/

The Assembly Appropriations Committee is considering A070 (Calabrese) / S1016 (Smith) tomorrow, January 7th. The bill directs DEP to classify neonicotinoid pesticides as restricted use pesticides. DEP must establish a list of chemicals that belong to the neonicotinoid class of chemicals that would be included under the restricted classification.

"Pesticides like neonicotinoids are killing bees and impacting human health. New Jersey needs to ban these chemicals. This legislation is an important step in the right direction to start phasing them out. These insecticides are not only harmful to public health, but are destroying our bee population that is critical to our ecosystem and food supply. These toxins have also posed a risk to other animals like birds. Without bees, many crops would cease to exist and will make human existence much harder," said Jeff Tittel, Director of the New Jersey Sierra Club. "We are entering into an

environmental crisis because of loss of bees, and pesticides are the main factor. This has a dramatic impact on farming and the environment. The Assembly needs to release this bill and move quickly to get it to the Governor's desk."

Neonicotinoid pesticides have been shown to negatively affect pollinating insects. These chemicals are suspected to contribute to "colony collapse disorder", or the disappearance of bee populations. Under this legislation, these pesticides would only be able to be purchased and used by certified and licensed pesticide applicators.

"New Jersey should be moving immediately to prohibit use of insecticides called neonicotinoids, especially imidacloprid and chlorpyrifos. These insecticides are destroying our bee population and are also harmful to human health. These chemicals are found in our drinking water, our fruit, and even in us. It can act as a neurotoxin and especially impacts pregnant women and children. It can be found in the applesauce we feed our children. This bill is a step in the right direction, but New Jersey needs to ban these chemicals. Hawaii has already banned this harmful insecticide, and today the courts in France upheld a ban in the European Union, " said Jeff Tittel. "Bees are dying off in record numbers and hives are collapsing. That will have serious consequences on farming and our environment. If New Jersey really wants to help save wildlife and bees, we need to avoid using pesticides that are harmful to them."

California Judge Rules the EPA Must Improve Asbestos Data Collection
Tara Strand, Mesothelioma.com
https://www.mesothelioma.com/blog/california-judge-rules-the-epa-must-improve-asbestos-data-collection/

A California judge ordered the Environmental Protection Agency (EPA) to increase its collection of asbestos-related data. The EPA is responsible for evaluating and sharing risks associated with asbestos in the United States. Currently, the U.S. does not have a full ban of asbestos. Although there are asbestos regulations in place, many feel they are inadequate.

U.S. Judge Edward J. Chen said the EPA did not have sufficient information about asbestos importing, use and presence in products for its Draft Risk Evaluation for Asbestos. According to Chen, the EPA has not adequately used its "significant enforcement powers" to collect data from companies to protect the public.

Request a Free 2021 Mesothelioma Guide
Eliminating Asbestos Reporting Loopholes Following Lawsuit
This latest ruling stems from lawsuits filed against the EPA. Asbestos awareness organizations and various states filed suits after the release of the organization's Draft Risk Evaluation for Asbestos. Numerous nonprofits claimed the document failed to consider the breadth of asbestos imported and used in the United States.

The EPA wrote the document using data voluntarily reported by manufacturers, processors and importers of asbestos. The EPA claimed this data, along with projections, was adequate to complete the Draft Risk Evaluation for Asbestos.

Judge Chen disagreed with the EPA's claims. He is requiring the organization to update the Chemical Data Reporting Rule. Updates would result in more information from companies about asbestos in products.

What Is the Chemical Data Reporting Rule?

Role of Third-Party Testing in EPA Data
One argument between the plaintiffs and the EPA was the role of third-party testing results.

Those that filed the suit against the EPA noted the federal organization did not consider third-party asbestos testing data in its Draft Risk Evaluation for Asbestos.

Two instances noted by the plaintiffs include:

Asbestos in Playskool crayons in 2018
Asbestos in Claire's makeup in 2017

Third-party testing identified the presence of asbestos in these children's products.

The EPA claimed this third-party data was not readily available.

Judge Chen agreed with the plaintiffs. He noted large organizations, such as Johnson & Johnson, may have third-party data available. Johnson & Johnson continues to face lawsuits resulting from its asbestos-contaminated talc products.

"EPA cannot know what submitters are 'expected to possess, control, or know' unless and until it requests that they submit their test results on asbestos impurities."

–U.S. Judge Edward J. Chen

What Could This Additional Data Show About Asbestos Risk in the U.S.?
An official review committee stated the EPA may have underestimated asbestos in the United States.

The EPA's Science Advisory Committee on Chemicals (SACC) reviewed the EPA Draft Risk Evaluation for Asbestos. The peer review found several issues with the document.

Dangers of Asbestos Exposure

According to the SACC's review of the Draft Risk Evaluation for Asbestos, the inadequate data used by the organization may have underestimated the exposure to asbestos by consumers and workers in the United States. It may also underestimate the dangers associated with asbestos exposure outside of mesothelioma and lung cancer.

In his ruling, Judge Chen noted the SACC specifically called out the EPA for not mandating asbestos reporting. The EPA has this authority under the Toxic Substances Control Act.

Asbestos Awareness Organizations See This Ruling as a Victory
The nonprofits that filed the suit against the EPA feel this ruling is a step in the right direction.

Through closing the loophole, the EPA can better regulate and inform the public about asbestos dangers.

The organizations and states joined forces to file the suit because they believed there was a lack of adequate data collected by the EPA.

Nonprofits and States Included in the Suit Against the EPA
[...]

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